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FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

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MUR: 6459

DATE COMPLAINTS FILED:

Original: February 25, 2011

Supplemental: March 14, 2011

DATE OF NOTIFICATIONS:

Original: March 7, 2011

Supplemental: March 22, 2011

LAST RESPONSE RECEIVED: March 24, 2011

DATE ACTIVATED: March 13, 2012

EXPIRATION OF SOL:

March 7, 2016 (earliest)

March 7, 2016 (latest)

COMPLAINANT:

Fred Karger

RESPONDENTS:

Iowa Faith and Freedom Coalition¹

Steve Scheffler, IFFC President

Gopal Krishna, IFFC Vice President

Morris Hurd, IFFC Treasurer

RELEVANT STATUTES
AND REGULATIONS:

2 U.S.C. § 431(9)(B)(i)

2 U.S.C. § 441b(a)-(b)

11 C.F.R. § 100.72(a)

11 C.F.R. § 100.73

11 C.F.R. § 100.76

11 C.F.R. § 100.131(a)

11 C.F.R. § 100.134(e)

11 C.F.R. § 110.13

11 C.F.R. § 114.3(c)(2)

11 C.F.R. § 114.4(f)

INTERNAL REPORTS CHECKED: None

FEDERAL AGENCIES CHECKED:

¹ The Complaint alleges that IFFC was "under the fiscal sponsorship of the Iowa Christian Alliance, a 501(c)(4) nonprofit organization." Compl. at 1. IFFC's publicly available Articles of Incorporation and Articles of Merger indicate that the Iowa Christian Alliance was merged into IFFC in 2011. See [http://sos.iowa.gov/search/business/\(S\(5d1u34450lvss45kh50iovg\)\)/filings.aspx](http://sos.iowa.gov/search/business/(S(5d1u34450lvss45kh50iovg))/filings.aspx).

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1 **I. INTRODUCTION**

2 The Iowa Faith and Freedom Coalition ("IFFC") invited a number of potential candidates
3 to speak at its March 7, 2011, Spring Kick Off ("SKO") event, and promoted the event as part of
4 the 2012 Iowa Republican Presidential caucus process. This matter involves allegations that the
5 IFFC, a non-profit corporation, made impermissible corporate in-kind contributions to five
6 potential candidates when they were "testing the waters" prior to becoming candidates for the
7 2012 Republican Presidential nomination. The Complainant is Fred Karger, who the IFFC did
8 not invite to speak at the SKO event, even though he also was exploring the possibility of
9 becoming a candidate for the Republican Presidential nomination.²

10 Karger alleges that the event, along with IFFC's payments in connection with the
11 expenses for holding the SKO event, provided the potential candidates who appeared with
12 something of value that constituted impermissible in-kind corporate contributions in violation of
13 2 U.S.C. § 441b(a). Respondents deny the allegation, contending that (1) none of the SKO event
14 speakers was a declared candidate; (2) IFFC did not compensate or promote any potential
15 candidate; and (3) there were other speakers at the SKO event in addition to those identified as
16 potential candidates. Resp. at 1.

17 IFFC's payments for expenses related to holding the SKO event, or a portion of them,
18 were in-kind contributions to the event speakers who were "testing the waters." Accordingly, we
19 recommend that the Commission find that there is reason to believe that Respondents violated
20 2 U.S.C. § 441b(a).

² The potential candidates who accepted IFFC's invitation to speak at the event and subsequently announced their candidacies were Herman Cain, Rick Santorum, Newt Gingrich, and Tim Pawlenty; another speaker, Buddy Roemer, announced his candidacy four days prior to the SKO event.

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1 **II. FACTS**

2 IFFC, a 501(c)(4) nonprofit corporation, states that its "purpose is to educate and
3 influence voters and politicians to keep their commitment to both liberty and law; that America
4 may continue to be one nation under God." See <http://ffciowamedia.com/about>. IFFC claims to
5 be "the largest and the most influential group in Iowa politics." It claims that it "made well over
6 560,000 voter contacts" in the "past election cycle" and that the IFFC's "VoterTrak program"
7 allows it "to identify and reach low propensity conservative voters." IFFC touts its on-the-
8 ground volunteer effort in competitive districts, and cites its distribution of 300,000 voter guides
9 to churches in Iowa. See IFFC Press Release, Mar. 6, 2011 (Supp. Compl., Attach. 3 at 2).
10 Steve Scheffler, Gopal Krishna, and Morris Hurd are, respectively, IFFC's President, Vice
11 President, and Treasurer.

12 **A. Events Leading up to the SKO Event**

13 During the months leading up to the SKO event, IFFC promoted the event as a valuable
14 opportunity for candidates to advance their future campaigns. According to an IFFC press
15 release, the event would "give the presidential candidates ten minutes to make a pitch and
16 present their visions as the voters of Iowa begin the process of making their decisions for the first
17 in the nation caucuses." IFFC Press Release, Jan. 3, 2011 (Compl., Attach. 2). IFFC's
18 invitations to the prospective candidates called the event "an important stop for candidates,"
19 because there would be "no better opportunity to meet these [Iowa GOP caucus] voters." *Id.* In
20 December 2010, IFFC President Scheffler was quoted as stating that IFFC was planning to send
21 invitations to anyone who had expressed the "slightest interest" in the 2012 Republican
22 nomination. See *Iowa Gets First Big 2012 Forum. So Who Will Show?*, Wall St. J., Dec. 29,
23 2010 (Compl., Attach. 1). In January 2011, IFFC stated that it sent invitations "to the top names

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1 being floated in the Republican primary for the 2012 presidential race." See IFFC Press Release,
2 Jan. 3, 2011 (Compl., Attach. 2). Press reports indicate that IFFC invited between 12 and 15
3 potential Republican Presidential candidates.³

4 Karger was exploring a candidacy for the Republican Presidential nomination at the time
5 SKO event speaking invitations were issued. See Compl. at 2. IFFC's refusal to extend an
6 invitation for Karger to speak at the SKO event was reported on January 4, 2011. See Thomas
7 Beaumont, *A Dozen GOP Presidential Prospects Invited to March 7 Iowa Forum*, DesMoines
8 Reg., Jan. 4, 2011 (Compl., Attach. 3). IFF President Scheffler was quoted at that time as stating
9 that Karger's focus on gay rights made him a marginal candidate. *Id.* After Karger filed the
10 Complaint in this matter, Scheffler was also quoted as stating: "Potential candidates were invited
11 based on an [sic] objective criteria of viability, fundraising ability, and prior electoral success
12 with advice from legal counsel. We are in full compliance with federal campaign regulations
13 governing such events." Tyler Kingkade, *Karger Files FEC Complaint Against Conservative*
14 *Iowa Group*, Iowa Independent, Feb. 24, 2011 (Supp. Compl., Attach. 10).

15 **B. The SKO Event**

16 On March 7, 2011, IFFC held the SKO event at Point of Grace Church in Waukee, Iowa,
17 reportedly before an estimated audience of 1,500 people. See Thomas Beaumont, *GOP*
18 *Presidential Hopefuls Push Moral Code at Iowa Forum*, DesMoines Reg., Mar. 7, 2011 (Supp.
19 Compl., Attach. 1); IFFC Press Release, Oct. 11, 2011 available at
20 <http://ffciowamedia.com/press/speaker-newt-gingrich-joins-the-line-up-for-iffcs-presidential->

³ See Thomas Beaumont, *A Dozen GOP Presidential Prospects Invited to March 7 Iowa Forum*, DesMoines Reg., Jan. 4, 2011 (Compl., Attach. 3) (IFFC issued invitations to Haley Barbour; Mitch Daniels; Newt Gingrich; Mike Huckabee; Sarah Palin; Ron Paul; Tim Pawlenty; Mike Pence; Rick Santorum; Mitt Romney; and John Thune); see also Sean Miller, *Potential White House Candidate Says Path Blocked by Prejudice*, The Hill, Jan. 7, 2011 (Compl., unnumbered attach.) (IFFC invited 15 potential candidates).

forum. The event lasted approximately two hours and 20 minutes. The speeches by Cain, Santorum, Gingrich, Roemer, and Pawlenty occupied approximately one-half of that time.⁴

The event began with an introduction by Krishna, who referred to the invitees as "potential presidential candidates." See *Iowa Faith and Freedom Coalition* at 01:05 (C-SPAN television broadcast Mar. 7, 2011) available at <http://www.c-spanvideo.org/program/IowaF>.

Scheffler stated in his speech that "a lot of people told me . . . [w]e would be lucky if one candidate showed up, let alone five . . . this [the SKO event] is the start of the 2012 Presidential Caucus process." See *id.* at 28:22-38. Scheffler also stated that, ". . . when we come out of this process, we are going to put Barack Obama into permanent retirement." *Id.* at 31:33-41.

Speaking at the SKO event, Ralph Reed, the founder and Chairman of the (national) Faith and Freedom Coalition, referred to the five potential candidates who spoke at the event as "those who seek the mantle of the leadership of our nation," *Id.* At 36:28-38, and "great leaders with great records of accomplishment who aspire to lead our nation." *Id.* at 45:20-31. During Reed's speech, he asked rhetorically, "Are you ready to being the process of choosing Barack Obama's successor here in Iowa?" *Id.* at 36:03-09. After discussing various state and federal officeholders that "we" "replaced" or "removed," Reed said "[b]ut we are just getting started because we are not going to rest until Barack Obama is replaced by a President who will honor and defend the Constitution of the United States of America come 2012." *Id.* at 42:00-20. After inviting the audience to contribute to the IFFC, Reed said, "You have an opportunity to determine who the next leader of the free world is . . . let the caucuses begin." *Id.* at 48:01-48:12.

⁴ IFFC indicated there would be "candidate and issue-oriented literature tables" at the event. See IFFC Press Release, Mar. 6, 2011 (Supp. Compl., Attach. 3). It is not clear based on the available information which potential candidates took advantage of this opportunity.

1 Four of the potential candidates then delivered speeches that were confined to discussions
2 of their personal biographies and positions on various issues; two of the five potential candidates,
3 Gingrich and Roemer, briefly referred to their consideration of a campaign for President. *See id.*
4 at 57:00- 02:16:55. Roemer, after referring to himself as a person "thinking of" running for
5 President at the beginning of his speech, solicited contributions and indicated what he would do
6 if elected President.⁵ *See id.* at 01:29:06-01:33:29.

7 **C. The Complaints and Response**

8 Karger filed the Complaint on February 25, 2011, before the SKO event took place, and
9 supplemented the Complaint on March 14, 2011, with information about what occurred at the
10 event. Karger alleges that IFFC made prohibited corporate in-kind contributions to the
11 prospective presidential candidates who spoke at the SKO event, because it did not satisfy the
12 requirements for the exemption to the definition of "contribution" for candidate debates set forth
13 in the Commission's regulations at 11 C.F.R. § 110.13.⁶ Karger noted that there was widespread
14 media coverage of the event that was worth "millions of dollars" to the candidates. *Id.* at 2-3.

⁵ We note that a website associated with IFFC contains press releases and a link to a C-SPAN video for a subsequent multi-candidate event that also may have violated 2 U.S.C. § 441b(a). On October 22, 2011, after Karger filed his Complaint and Supplemental Complaint, the IFFC held its annual Fall Banquet, apparently co-sponsored by an organization called the Iowa Energy Forum, at the Knapp Learning Center at the Iowa State Fairgrounds, which included dinner and appearances by six declared Presidential candidates, including three that participated in the SKO event. The candidates appeared one at a time to give speeches and answer a series of questions. *See IFFC Forum Wrap Up*, Oct. 27, 2011, available at <http://ffciowamedia.com/wp-content/uploads/2011/09/forum-wrap-up-102711.pdf>; IFFC Press Release, Oct. 11, 2011, available at <http://ffciowamedia.com/press/speaker-newt-gingrich-joins-the-line-up-for-iffcs-presidential-forum>; see also *Iowa Faith and Freedom Coalition* (C-SPAN television broadcast, Oct. 2, 2011), available at <http://www.c-spanvideo.org/program/302136-1>. Karger did not make any allegations regarding this separate event.

⁶ Karger alleges that IFFC did not use pre-established and objective criteria to select the invitees, Compl. at 3; Supp. Compl. at 1, 3; and that IFFC was not an unbiased debate staging organization because it allowed speakers at the SKO to attack President Obama and each other, citing Reed's reference, noted above, to choosing the President's successor. Supp. Compl. at 2.

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1 The Response does not argue that the SKO event was either a debate or a candidate
2 forum. Resp. at 1. Instead, IFFC takes the position that “there was no in-kind contribution”
3 because IFFC did not compensate any of the speakers. *Id.* at 1. The response states that its
4 Board Members invited speakers to the SKO event “who the Board Members thought are the
5 people whom the attendees would be interested to meet, greet and hear,” and that “[n]one of the
6 potential 2012 Republican Presidential Candidates who spoke during the [SKO event] ha[d]
7 declared their candidacy.”⁷ *Id.* IFFC also noted that three speakers at the event were not
8 potential candidates. *Id.* at 2.⁸

9 **III. LEGAL ANALYSIS**

10 The Act prohibits corporations from making contributions to federal candidates. 2 U.S.C.
11 § 441b(a). This prohibition includes both direct and indirect payments or gifts of money,
12 services, or anything of value to a candidate. 2 U.S.C. § 441b(b)(2). The Commission’s
13 regulations exempt from the definitions of contribution and expenditure those funds received,
14 and payments made, solely to determine whether an individual should become a candidate
15 (“testing the waters” activity). 11 C.F.R. §§ 100.72(a), 100.131(a). If the individual “testing the
16 waters” subsequently becomes a candidate, however — like the then-potential candidates who
17 spoke at the SKO event — the funds received are deemed contributions subject to the reporting
18 requirements of the Act. See 11 C.F.R. § 100.72.⁹ Only funds permissible under the Act may be
19 used for “testing the waters” activities. 11 C.F.R. §§ 100.72(a), 100.131(a).

⁷ The Response also stated that none of the potential candidates, unlike Karger, had exploratory committees. Resp. at 1. Rosmer, however, disclosed his exploratory committee in a report to the Commission on March 3, 2011, four days before the event.

⁸ IFFC generally contended that the “FEC does not have jurisdiction to hear this matter.” *Id.*

⁹ If the investigation confirms that candidates received prohibited in-kind corporate contributions, we will make further recommendations about what steps, if any, the candidates’ principal campaign committees should take.

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1 Because IFFC is a corporation, if it provided anything of value to further the “testing the
2 waters” activities of the SKO event speakers, any benefit conferred would constitute a prohibited
3 in-kind corporate contribution. *See* 11 C.F.R. § 100.72. Accordingly, IFFC’s disbursements in
4 connection with the SKO event, or some portion of them, constituted in-kind contributions to the
5 speakers who were “testing the waters” (and later became federal candidates) in violation of
6 2 U.S.C. § 441b(a).

7 **A. The SKO Event Constituted Something of Value to the Candidates**

8 IFFC press releases, quoted above, as well as the statements by Scheffler both before and
9 at the SKO event, indicate that IFFC invited a number of SKO event speakers based on the fact
10 that they were considering becoming candidates for the Republican Presidential nomination.
11 IFFC attempted to induce potential candidates to speak at the event by suggesting that
12 participation would help them win the Iowa GOP caucus. Furthermore, IFFC promoted the
13 event to the public by focusing on the status of the invited speakers as potential candidates and
14 characterizing the event as a part of the 2012 election process. Also, as noted above, one of the
15 speakers, Roemer, solicited campaign contributions during the event.

16 In sum, the record evidence shows that there is reason to believe that the IFFC-sponsored
17 SKO event conferred a valuable benefit to the “testing the waters” activities of the five
18 candidates who spoke at the SKO event in violation of the Act.

19 Several Commission regulations exempt corporate payments to sponsor and finance
20 candidate appearances in limited circumstances. But none of them applies to the SKO event.

21 A corporation may allow a candidate to address its restricted class at a corporate meeting,
22 convention, or other function. *See* 11 C.F.R. § 114.3(c)(2). A corporation’s restricted class is
23 limited to its stockholders and executive or administrative personnel, and their families, 11

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1 C.F.R. § 114.1(j), as well as the members of a membership corporation. *See* 11 C.F.R.
2 § 100.134(e). Respondents have not claimed that IFFC limited attendance at the SKO event —
3 reportedly 1,500 people — to its restricted class. Further, IFFC's Articles of Incorporation state
4 that it is not a membership organization. *See* IFFC Articles of Incorporation, *available at*
5 [http://sos.iowa.gov/search/business/\(S\(5dlu34450lvssj45kh50ioyg\)\)/filings.aspx](http://sos.iowa.gov/search/business/(S(5dlu34450lvssj45kh50ioyg))/filings.aspx). Thus, IFFC did
6 not limit attendance at the SKO event to a restricted class or employees.

7 Although the Commission's regulations also establish an exemption for corporate-funded
8 candidate appearances before employees of the corporation, that exemption requires that
9 Presidential candidates may only be excluded pursuant to pre-established objective criteria. *See*
10 11 C.F.R. § 114.4(b)(1)(ii). The available information indicates that IFFC did not limit
11 attendance at the SKO event to its employees and, as noted above, the available information
12 indicates that IFFC did not use objective criteria. Accordingly, IFFC's payments for the SKO
13 event are not exempt pursuant to 11 C.F.R. § 114.4.¹⁰

¹⁰ In AO 1996-11 (National Right to Life Conventions, Inc.) ("NRL"), the Commission authorized NRL to promote a convention to which it intended to invite candidates, who were also officeholders, to speak to the general public about "legislative efforts and proposals in Congress and other issues of interest to pro-lifers." *See* AO 1996-11 at 1, 5. That AO does not shield IFFC from the enforcement of the Act here, because the circumstances of the SKO — which was framed as a campaign-related event and included calls by speakers to defeat a federal officeholder and a candidate's solicitation of contributions — are materially distinguishable from the request and opinion in NRL.

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B. The Value of IFFC's Contributions to the Candidates

The Complaint alleges that media coverage of the event was worth "millions of dollars" to the candidates. Compl. at 2-3. Corporations may permit the media to cover corporate events at which candidates appear. *See* 11 C.F.R. §§ 114.3(c)(2)(iv), 114.4(b)(1)-(2). The media's costs in covering such events are not contributions or expenditures. *See* 2 U.S.C. § 431(9)(b)(i); 11 C.F.R. § 100.73.

IFFC's costs of conducting the SKO event, however, constitute a prohibited in-kind corporate contribution to the testing the waters activities of the five potential candidates. *See* 11 C.F.R. § 100.72. The Complaint does not allege, however, and the available information does not establish the costs, if any, that IFFC incurred for the use of the facility, light and sound staging, advertising, invitations, food, and beverages at the SKO event. Accordingly, at this time, we have no information regarding the total value of IFFC's in-kind contribution.¹¹ Following an investigation, we will make recommendations about whether this matter warrants further consideration and proceedings.

IV. CONCLUSION

IFFC appears to have used part of its annual SKO event to benefit the "testing the waters" efforts of five potential presidential candidates seeking the Republican nomination. Consequently, we recommend that the Commission find reason to believe that Respondents made prohibited corporate contributions in violation 2 U.S.C. § 441b(a).

V. PROPOSED INVESTIGATION

We propose a relatively short and tailored investigation to determine the value of IFFC's in-kind contributions. Although we will attempt to conduct the investigation informally, formal

¹¹ We note that the value of the contribution may be less than IFFC's total costs for putting on the event, depending on the application of the allocation regulations at 11 C.F.R. § 106.1(a).

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